

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 01-7763-DHW  
Chapter 13

KIMBERLY R. WRIGHT NEWMAN,

Debtor.

**ORDER ON DISBURSEMENT OF SETTLEMENT PROCEEDS**

Kimberly R. Wright Newman filed this chapter 13 case on December 6, 2001. On February 27, 2004, Ms. Newman was involved in an automobile accident in which she was personally injured and her automobile was totaled. On the same day as the auto accident, the debtor received medical services from American Family Care Centers valued at \$216.50. Later, on March 17, 2004, she began receiving rehabilitation services from Advanced Rehab. The value of the services was \$2,135.20.

On June 16, 2004, the court entered an order approving the employment of Robert F. Nelson under 11 U.S.C. §327(e) as special counsel to the trustee (Docket Entry #35). The purpose of the employment was to pursue on behalf of the bankruptcy estate a cause of action against Alfa Insurance which arose out of the debtor's automobile accident.

On June 28, 2004, Mr. Nelson filed a motion to approve settlement of the cause of action for the amount of \$7,332.20 (Docket Entry #39). Further, the motion seeks the court's approval to disburse the settlement proceeds as follows:

Robert F. Nelson (40% contingency fee)	2,932.88
American Family Care Centers	216.50
American Rehab	2,135.20
Kimberly Newman (lost wages)	129.20
Chapter 13 trustee	<u>1,918.42</u>
Total Settlement	\$7,332.20

The bankruptcy administrator filed an objection in response to the motion to approve the settlement. (Docket Entry #42). Therein, the administrator

recommends approval of the settlement amount and attorney fees but objects to the payment of medical expenses to American Family Care Centers and American Rehab and lost wages to Kimberly Newman.

Following a July 19, 2004 hearing, the court entered an order approving the settlement amount and the attorney fees but taking under advisement the issue of disbursement of the remaining settlement proceeds (Docket Entry #44). The parties were given until August 19, 2004 to file their respective briefs concerning this issue. Robert F. Nelson and the chapter 13 trustee filed briefs (Docket Entries #48 and #49, respectively); the bankruptcy administrator did not.

Alabama law creates a lien for hospital operators. The exact language of the statute provides:

Any person, firm, hospital authority or corporation operating a hospital in this state shall have a lien for all reasonable charges for hospital care, treatment and maintenance of an injured person who entered such hospital within one week after receiving such injuries, upon any and all actions, claims, counterclaims and demands accruing to the person to whom such care, treatment or maintenance was furnished, or accruing to the legal representatives of such person, and upon all judgments, settlements and settlement agreements entered into by virtue thereof on account of injuries giving rise to such actions, claims, counterclaims, demands, judgments, settlements or settlement agreements and which necessitated such hospital care, subject, however, to any attorney's lien.

*Ala. Code* § 35-11-370 (1975).

In addition, Alabama law provides a means for perfection of the hospital operator's lien:

(a) In order to perfect such lien the operator of such hospital, before or within 10 days after such person shall have been discharged therefrom shall file in the office of the judge of probate of the county or counties in which such cause of action arose a verified

statement setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital and the name and address of the operator thereof, the dates of admission and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and to the best of claimant's knowledge, the names and addresses of all persons, firms or corporations claimed by such injured person, or the legal representative of such person, to be liable for damages arising from such injuries; such claimant shall also within one day after the filing of such claim or lien, mail a copy thereof by registered or certified mail, postage prepaid, for each person, firm or corporation so claimed to be liable on account of such injuries, at the addresses so given in such statement, and to the patient, his guardian or his personal representative at the address given at the time of admission. The filing of such claim or lien shall be notice thereof to all persons, firms or corporations liable for such damages whether or not they are named in such claim or lien.

(b) The judge of probate shall endorse thereon the date and hour of filing, and at the expense of the county shall provide a hospital lien book with proper index in which he shall enter the date and hour of such filing, the names and addresses of such hospital, the operators thereof and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damages. Such information shall be recorded in the name of the patient. The judge of probate shall be paid \$1.00 as his fee for such filing.

*Ala. Code* § 35-11-371 (1975).

#### American Family Care Centers

There is no evidence that American Family Care Centers is a hospital within the meaning of § 35-11-370. If not, it cannot qualify under the plain words of the statute as a lien creditor in the settlement proceeds because § 35-11-370 does not extend to other health care providers.

However, assuming that American Family Care Centers qualifies as a hospital, it would have had an automatic lien on the settlement proceeds because the debtor/patient received the treatment for her injuries within one week after

those injuries were sustained. As between the debtor/patient and the hospital, the automatic lien is enforceable even though the lien is not perfected in accordance with § 35-11-371. Perfection is important, however, if there are other creditors making claim to the proceeds. *Guin v. Carraway Methodist Medical Center*, 583 So. 2d 1317, 1319 (Ala. 1991).

There is no evidence that American Family Care Centers perfected its lien under § 35-11-371. Although this debtor was in bankruptcy at the time she was discharged as a patient, American Family Care Centers could have perfected its lien in these settlement proceeds without violating the automatic stay imposed by 11 U.S.C. § 362.<sup>1</sup> While the lien is automatic and need not be perfected as against the debtor, the same is not true when there are competing claims to the settlement proceeds, as here, in the person of the chapter 13 trustee. Without perfection by the hospital, the trustee's interest in the proceeds is superior because under 11 U.S.C. § 1306, the cause of action, although arising post-petition, is property of the bankruptcy estate.

American Family Care Centers appears to hold an unsecured claim that arose after the filing of the case. Pursuant to 11 U.S.C. § 1305, American Family Care Centers may, if it elects to do so, file a postpetition claim and be paid under the plan.

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<sup>1</sup> 11 U.S.C. § 362(b) provides:

- (b) The filing of a petition . . . does not operate as a stay— . . .
- (3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title.

### Advanced Rehab

There is no evidence that Advanced Rehab is a hospital within the meaning of § 35-11-370 entitling it to a lien in the settlement proceeds. If not, Advanced Rehab has no lien under the statute and is an unsecured creditor.

Assuming, however, that Advanced Rehab is a qualified hospital, it nevertheless is not entitled to a lien because the debtor/patient did not receive treatment of her injuries there within one week of the injuries being sustained. The plain language of the statute grants a lien to the hospital that begins treatment of the patient's injury within one week of its occurrence. Because the injury in this case was sustained on February 27, 2004 and the treatment was provided by Advanced Rehab on March 17, 2004, outside of one week, it follows that Advanced Rehab does not have a lien on the settlement proceeds.

American Rehab appears to hold a postpetition claim for which it may file a proof of claim and be paid under the debtor's confirmed plan. *See* 11 U.S.C. § 1305.

### Kimberly Wright Newman

In his proposed distribution of the settlement proceeds, Mr. Nelson proposes a \$129.20 distribution to the debtor which is characterized as lost wages. In brief, however, Mr. Nelson does not advance any legal theory for the propriety of such distribution. Neither is court aware of any legal basis for doing so.

For these reasons the court, on the basis of the evidence before it, cannot approve the distributions proposed to American Family Care Centers, American Rehab, or to the debtor. However, because American Family Care Centers and American Rehab have been not been given notice of this proceeding, to avoid their liens would deprive them due process of law. Accordingly, it is

ORDERED that the settlement proceeds, after deducting the previously allowed attorney fees, be paid over to the chapter 13 trustee. Before making general distribution of these proceeds under the confirmed plan, the trustee would be well advised to seek to avoid these liens, if any, through an adversary

proceeding.<sup>2</sup>

Done this 7<sup>th</sup> day of September, 2004.



Dwight H. Williams, Jr.  
United States Bankruptcy Judge

c: Debtor

Gail Hughes Donaldson, Attorney for Debtor

Robert F. Nelson, Esq.

Teresa R. Jacobs, Bankruptcy Administrator

Curtis C. Reding, Trustee

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<sup>2</sup> See Fed. R. Bankr. Proc. 7001(2).